

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Incentive Auction Task Force and Media)	MB Docket No. 16-306
Bureau Seek Comment on Post-Incentive)	
Auction Transition Scheduling Plan)	
)	
Media Bureau Seek Comment on Update to)	MB Docket No. 16-306
Catalog of Reimbursement Expenses)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	
)	
Comment Sought on)	AU Docket No. 14-252
Competitive Bidding Procedures for)	
Broadcast Incentive Auction 1000, Including)	
Auctions 1001 and 1002)	

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EXECUTIVE SUMMARY

T-Mobile USA, Inc. (“T-Mobile”)¹ submits these comments in response to the Incentive Auction Task Force (“IATF”) and the Media Bureau’s Public Notice seeking comments on the post-incentive auction transition scheduling plan (the “Transition Plan”)² and the Media’s Bureau’s Public Notice seeking comment on updates to the catalog of reimbursement expenses.³ T-Mobile further submits comments in the open incentive auction proceeding with regard to the prohibited communications rule.

T-Mobile believes the Transition Plan proposes an effective and efficient means of ensuring continuity of over-the-air television services while rapidly transitioning auctioned spectrum for mobile broadband use and applauds the FCC for its thoughtful approach. In particular T-Mobile appreciates the development of a plan to rapidly transition the band in a way that prioritizes clearing the mobile spectrum so that this spectrum can be put to use for new services, while minimizing disruption to viewers. Flexibility within this well-developed framework, however, is critical to the success of this transition. Thus, T-Mobile submits these comments to offer specific additional techniques that could speed the transition and reduce relocation costs, including permitting early testing and transition through the utilization of options such as auxiliary antennas, temporary channels, multicast/channel-sharing, expedited processing of major modifications, and creation of additional opportunities for stations to elect

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

² *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, DA 16-1095 (rel. Sept. 30, 2016) (“*Transition Plan Public Notice*”).

³ *Media Bureau Seek Comment on Update to Catalog of Reimbursement Expenses*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, DA 16-1164 (rel. Oct. 13, 2016) (“*Eligible Expenses PN*”).

flexible use. All of these ideas could be implemented voluntarily by broadcasters to customize approaches that work best for them to clear the spectrum quickly and efficiently and in ways that do not delay or impair the FCC's overall scheduled transition plan.

The need for ongoing adjustment in scheduling to respond to information about delays and accelerations during the process is critical to ensure the most efficient allocation of resources. T-Mobile urges the staff to make available more details about the mechanisms by which these inputs will be communicated to the FCC and what impacts they are expected to have on phase scheduling. As the proposal stands now, there is not enough information for interested parties to develop an informed opinion for comment or critique.

Finally, T-Mobile recommends that the Commission clarify that its prohibited communications rules do not apply to communications about the post-auction transition between forward- and reverse-auction bidders if the television stations did not or are no longer participating in the reverse auction. The Commission should also clarify that its rules permit communications about the post-auction transition between forward- and reverse-auction applicants after the final stage rule is met. Any discussion of matters related to bids or bidding strategy would remain prohibited. In addition, the Commission should clarify that broadcasters that either did not participate in the auction or have exited the auction may communicate about the post-auction transition among similarly situated parties under certain conditions. These clarifications promise to promote cooperation among stakeholders in the 600 MHz transition process, further limit the potential for interruption to over-the-air television service and accelerate the deployment of next-generation mobile broadband service to the public. The Commission can also promote compliance and improve the post-auction transition by issuing periodic restatements of its rules on prohibited communications. These restatements could extend

to affirmations of fundamentals, such as the ability of a restricted party television station to communicate with unrestricted vendors and service personnel as long as those parties do not serve as conduits for information to restricted parties in the auction. Improved communication among all stakeholders promises to accelerate the transition process.

I. INTRODUCTION.

As a qualified bidder in the forward auction of wireless spectrum relinquished by broadcasters in the incentive auction,⁴ T-Mobile is acutely interested and deeply engaged in ensuring the timely and orderly post-incentive auction transition of broadcasters from the new 600 MHz wireless band. T-Mobile has been a vocal advocate throughout the incentive auction proceeding for the transition of spectrum as quickly as possible in a way that is fair to broadcasters and wireless carriers alike. To that end, T-Mobile has expended considerable resources to conduct its own research to gather data on the actual availability of resources, and has conducted numerous studies and analyses of transition plan options to identify and resolve potential timeline constraints. T-Mobile has also partnered with broadcast vendors to assist them in ramping up their capabilities in preparation for the transition.⁵ In short, T-Mobile is seeking to discover and proactively address any problems in the broadcaster ecosystem that could cause a delay in the post-incentive auction transition process.

T-Mobile commends the IATF and Media Bureau for their thorough research, extensive analysis and modeling of the resources and actions necessary to make the post-incentive auction broadcast transition a success. The plan sets forth “a post-incentive auction transition timetable that is flexible for broadcasters and that minimizes disruption to viewers” while providing

⁴ *62 Applicants Qualified to Bid in Forward Auction (Auction 1002) of the Broadcast Television Incentive Auction; Clock Phase Bidding to Begin on August 16, 2016*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, Public Notice, DA 16-796, Attach. A at 3 (rel. July 15, 2016) (T-Mobile License, LLC is a wholly-owned subsidiary of T-Mobile USA, Inc.).

⁵ Press Release, ERI to accelerate completion of TV channel repack post FCC's Broadcast Incentive Auction (Apr. 18, 2016), at <http://bit.ly/2f0ICs7> (last visited Oct. 28, 2016) (announcing a partnership with T-Mobile “that gives ERI the ability to ramp materials and accelerate antenna production capacity by 800% ... in anticipation of the end of the auction.”).

“certainty to wireless providers”⁶ by prioritizing clearing the newly created 600 MHz mobile band while ensuring that all broadcasters operate on their new channels within the stipulated 39-month timeframe.

The proposed Transition Plan appears to be an effective and efficient means of ensuring continuity of over-the-air television services while rapidly transitioning auctioned spectrum for mobile broadband use. The Transition Plan will assign all repacked television stations into ten “transition phases,”⁷ each of which begins at the same time but will have sequential testing periods and deadlines, or “phase completion dates”⁸—each “phase completion date” being the deadline for all construction work on new channel facilities as well as the last day that a station may operate on its pre-auction channel.⁹ T-Mobile agrees with the Commission that this phased approach will “smooth the way for station coordination, promote efficient allocation of limited resources, limit the impact of the transition on consumers, and facilitate FCC monitoring to determine whether schedule adjustments are necessary during the course of the transition process.”¹⁰

Critical to the success of this transition is avoiding rigid assumptions about resource constraints and station transition agility. The Transition Plan must allow for—and rely on—flexibility in order to avoid delays that might undermine swift clearance of the new 600 MHz

⁶ *Transition Plan Public Notice* ¶ 2 (citing *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567, 6797 ¶ 563 (2014) (“*Incentive Auction R&O*”), affirmed, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)).

⁷ See *id.* ¶ 4.

⁸ *Id.* ¶ 4.

⁹ See *id.*

¹⁰ *Id.* ¶ 4.

mobile band. Specifically, T-Mobile suggests the consideration of several creative techniques that could speed the transition and reduce relocation costs:

- **Permit Early Testing:** permit stations to transmit on their new channel voluntarily under reduced power or with voluntarily interference agreements among other affected broadcasters.
- **Encourage the use of Auxiliary Facilities:** temporary antennas and equipment can be used by broadcasters to operate on their new channel assignment during the completion of permanent facilities. The FCC should encourage the deployment of these facilities before and during the transition by adopting priority processing policies to ensure quick construction permit grants.
- **Permit Temporary Channels:** permit broadcasters to voluntarily use temporary channels when possible to clear the mobile band and without causing interference.
- **Temporary Multicast/Channel-Sharing:** broadcasters vacating the newly created 600 MHz mobile band should be permitted to “go dark” on their old channels and channel share with broadcasters outside of the mobile band without penalty and with reimbursement.
- **Facility-Sharing Major Modifications:** expedite major modifications that combine facilities in a way that facilitate transition efficiency.
- **Second 6403(b)(4)(B) waiver window:** create an additional filing window time period in which broadcasters may elect to adopt flexible use in lieu of reimbursement from the reimbursement fund.

- **Clarification of the rules on prohibited communications:** the rules governing prohibited communications should be clarified to avoid overly narrow interpretations that may constrain the ability of broadcasters and wireless carriers to collaborate in the post-auction transition process.

II. FLEXIBILITY WITHIN THE TRANSITION PLAN IS ESSENTIAL TO ENSURE A PROMPT AND ORDERLY TRANSITION.

A. Permit Early Testing and Early Transition.

In order to ensure the most efficient post-auction transition, the staff should permit broadcast stations voluntarily to conduct tests and to complete transitions early, irrespective of their assigned phase. The FCC can ensure that constrained resources are not appropriated to the detriment of other broadcasters by requiring each such broadcaster to certify that its construction will create no additional constraints on resources and its early testing and operations will cause no new interference. There are likely situations where broadcasters temporarily can reduce their power on their new channel or reach one or more voluntary interference agreements with other broadcasters to permit interference. Broadcasters who choose this route should be held harmless under their retransmission consent agreement and must-carry status, so long as the appropriate quality programing delivery can be made to the MVPD provider. Stations which meet this burden can be deemed to have “no negative impact” on the Transition Plan and should be permitted to test and transition early.

1. Auxiliary Facilities. The Transition Plan contemplates that the majority of repacked television stations will utilize an auxiliary antenna during their transitions.¹¹ Stations are expected to rely on auxiliary antennas and related equipment to operate on a station’s pre-

¹¹ *Id.*, App. A ¶ 50 (“(2) The Phase Scheduling Tool assumes that 75% of all stations ... will need to install an auxiliary antenna”).

auction channel while its current primary antennas is removed and the new channel antenna is installed. This assumption, however, is limiting: the Commission should permit more expansive use of auxiliary antennas, including their use for operation on post-transition channels in advance of the phase completion date for stations that cause no negative impact. Permitting such auxiliary antenna transitions offers (i) agility for wireless providers to convert the spectrum to wireless use more quickly (thereby avoiding the delay of waiting on dozens of stations in a phase to transition) and (ii) flexibility for phases to be able to transition without being hindered by stations experiencing unforeseen construction delays.¹²

As the IATF and Media Bureau have concluded, capacity to manufacture and deliver broadband auxiliary antennas is satisfactory irrespective of the expected manufacturing load from full-power antenna orders for the transition.¹³ In other words, the staff has confirmed that there is sufficient manufacturing capacity to deliver new broadband antennas to a majority of stations well in advance of each station's phase completion date. Moreover, the acquisition of auxiliary antennas is already contemplated in the Catalog of Potential Expenses and Estimated Costs as an eligible transition reimbursement expense.¹⁴ Certainly there would be no negative impact on manufacturing or the relocation reimbursement fund if individual stations were to

¹² Most of the broadcast television auxiliary antennas manufactured today are frequency-agile antennas that can be used off-the-shelf to transmit television channels across the UHF spectrum. *See* Press Release, Dielectric Introduces Innovative Auxiliary UHF Antenna Ideal for TV Spectrum Repack (Apr. 6, 2016), <http://www.dielectric.com/news/dielectric-introduces-innovative-auxiliary-uhf-antenna-ideal-for-tv-spectrum-repack/> (last visited Oct. 28, 2016). That is in addition to the auxiliary antennas already in existence, of which approximately half are broadband. *See* Digital Tech Consulting, Inc., Response to T-Mobile and CCA Reports on the Broadcast Spectrum Repacking Timeline, Resource and Cost Study (Mar. 2016), at 7.

¹³ Auxiliary antenna manufacturing is among the resources deemed to be “unconstrained”. *Id.* ¶ 39.

¹⁴ *See, e.g., Eligible Expenses PN* at App. Pg. 9 (referencing costs for “UHF – Broadband Panel, Side Mount Aux/Interim”).

obtain their auxiliary antennas early. In fact, many markets may be served by multiple transitioning stations operating from a single shared combined broadband auxiliary antenna, if one were available. The Commission should encourage the use of combined auxiliary antennas, where feasible, as they can achieve many positive externalities, including potential lower cost-per-broadcaster due to the distribution of shared costs (including tower rents) among multiple stations. Where combined auxiliary antennas are not feasible, the Commission should nonetheless allow individual stations' use of auxiliary antennas for early transition where such stations can demonstrate no negative impact.

Auxiliary antennas will also be useful in cases of stations seeking major modifications in the second construction permit filing window pursuant to the Incentive Auction Report & Order. Stations which seek expanded facilities will be required to first file an original construction permit application for minor modification of their facilities to those specified in the channel reassignment public notice.¹⁵ Depending on the phase assignment for that station and the time it takes for the Media Bureau to process and grant the station's major modification application for the expanded facilities (the "Maximization CP"), there is potential for stations to (a) have to construct twice (once on the new channel at the assigned parameters, and again, perhaps a year or more later, with the expanded facilities), (b) seek assignment to a later phase, or (c) seek a waiver of the requirement to build the original construction permit by the phase completion date. None of these outcomes are in the public interest, as they most assuredly will have a negative impact on the overall transition and the consumer. Allowing stations in these situations to transition early or with the other stations in their phase to the new channel on a special temporary

¹⁵ *Incentive Auction R&O* at ¶ 556.

authorization using auxiliary facilities pending the grant of the Maximization CP will alleviate the potential for massive delays in and disruptions to the transition.

Such auxiliary antenna uses may also be useful in minimizing channel-sharing station disruption. Stations which are winning bidders in the auction but elect to remain on the air pursuant to channel sharing arrangements must cease operation on the pre-auction channel not later than three months after receipt of auction proceeds.¹⁶ In instances in which the “sharer” station itself is itself transitioning to a new channel, the “sharee” station will be forced to move twice. While the sharee’s costs are not a direct concern of the Commission,¹⁷ they are not insignificant to the broadcasters. Provided there is no negative impact, these broadcasters could minimize costs and disruption by jointly transitioning early to the post-transition channel on an auxiliary antenna while waiting the full-power antenna installation and phase transition.

The Media Bureau should adopt internal policies which would expedite the processing of construction permits for auxiliary antennas that operate on the new, post-auction channel rather than the current (pre-auction) channel. The Media Bureau should also put in place a process by which a station can request licensed or temporary operation on the new, post-auction channel on its existing auxiliary facilities. T-Mobile understands that switching stations to new channel operation ahead of their transition completion dates will necessitate additional channel re-scans. Because it is likely the Commission’s ability to severely curtail the number of re-scans is already limited in light of the introduction of channel sharing arrangements, T-Mobile proposes coordinating broadcaster consumer education outreach with the power of wireless providers to

¹⁶ *Id.*, ¶ 561.

¹⁷ Only “sharer” stations which are assigned a new channel in the repack are eligible for reimbursement of costs incurred in the transition. *Id.*, ¶ 601.

regionally target SMS messaging to direct viewers to apps or websites which walk them through the process of a channel rescan.¹⁸

2. Temporary Channels. Auxiliary antennas are not the only option for early transitioning or ensuring continuity of broadcast service. The staff outlined the benefits of and strategy for temporary channels, but currently declines to adopt them as part of the Transition Plan. As part of its encouragement of optimal flexibility, T-Mobile supports the judicious use of temporary channels below the new wireless band, provided they will not delay the overall clearing process. To facilitate this, the staff should adopt policies to allow use of temporary channels beyond just those stations with sufficient information and resources to have made the decision within the initial ninety day as after the close of the auction. In other words, the Commission, in promoting an overall efficient transition, should not preclude stations which find themselves delayed later in the process or able to clear from the 600 MHz band early from utilizing the temporary channel option.¹⁹ T-Mobile sees no reason to limit the use of temporary channels to Class A and lower-power full-power stations, so long as the overall goals are met and the 600 MHz band clearance is not impeded.

¹⁸ Such SMS outreach must, of course, comply with all rules and regulations regarding the sending of messages to subscribers who have opted in to receiving such messages. See, e.g., Digital TV Antennas app (<https://play.google.com/store/apps/details?id=ar.com.lichtmaier.antennas&hl=en>) for an example of the type of app that might be useful to guide the public through channel rescanning.

¹⁹ This option may become more possible given the expected expanded use of broadband antennas including broadband auxiliary antennas.

3. Temporary Multicast/Channel Sharing. The staff should also permit stations to seek temporary channel-sharing arrangements as a further option to accelerate the transition or to ease transition delay.²⁰ Since the digital transition, television stations already have, or can easily install, the equipment necessary to support multicast programming channels. Use of this multicast capacity for temporary channel-sharing, with the one licensed station operating on the primary stream and one sharee operating as the “dot 2”, can be an easy and inexpensive solution. Temporary channel sharing arrangements for this purpose should not curb either party’s eligibility for reimbursement of relocation funds for construction of the facilities specified in each station’s original construction permit relocation reimbursement estimates. In the interest of promoting flexibility toward an efficient transition and swift clearance of the new wireless band, T-Mobile supports making this option available to stations which determine this is their optimal solution.

4. Expedited Processing of Major Modifications for Stations in the 600 MHz Band. T-Mobile believes that a large percentage of transitioned stations will file Maximization CP applications in the second construction filing window, creating a situation ripe for delay unless the FCC acts proactively. As discussed above, allowing stations to use auxiliary antennas to transition early to their post-auction channels while awaiting processing of their Maximization CPs is one way to provide a relief valve for the potential logjam. Another would be to simply adopt expedited processing procedures and methods, particularly where stations are moving from the 600 MHz band. If the primary goal of the transition is to free the new 600 MHz band for

²⁰ See, e.g., Comments of OTA Broadcasting, LLC, GN Docket No. 12-268, MB Docket No. 16-306 (Oct. 26, 2016) (“Voluntary transitional channel sharing will provide broadcasters with the opportunity to transition to post-auction channels on a schedule that makes the most sense for each station while accelerating, or at least not disrupting, the 600 MHz transition.”). T-Mobile supports extensions of time for construction permits for stations that seek to channel-share, provided that such actions do not hinder the clearance of the 600 MHz band.

wireless use, the Commission must expedite any applications toward accomplishing this – including major modifications. Another consideration worthy of expedited treatment are stations seeking facilities on a combined broadband primary antenna. The Commission should encourage and not penalize with delay the coordination of stations into combined broadband antenna facilities, as such facilities will have lower overall costs and may allow multiple, even linked-station sets, to transition more rapidly.

5. Enable a Flexible Use Opportunity in Second Construction Permit Filing Window. As ATSC 3.0 and development of Next Generation TV becomes closer to reality, T-Mobile believes that the 30-day window for broadcast stations to seek a service rule waiver²¹ is insufficient to allow broadcasters to make a reasonable determination on the viability of flexible use for their stations. Instead, the Commission should, at a minimum, allow stations to submit a request for waiver during the second construction permit filing, or major modification, window.

These “service rule waivers” are explicitly permitted under Section 6403(b)(4)(B) of the Spectrum Act to allow broadcast licensee to elect to forego reimbursement of relocation costs in exchange for the right to make “flexible use” of their spectrum.²² The Commission delegated to the Media Bureau discretion to process such requests under the Commission’s general waiver standard.²³ As the Commission well knows, broadcasters are eager to realize ATSC 3.0 broadcast opportunities for enhanced viewing experiences and integration of Internet Protocol

²¹ *Incentive Auction R&O*, ¶ 643.

²² *Id.* ¶ 637 (citing Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act)).

²³ *Id.* § 640.

services.²⁴ The uncertainty surrounding any individual station’s expected channel reassignment, transition, and business plans following the auction, however, make it unlikely that more than a handful of stations will have sufficient resources to make the determination to select flexible use in time to submit in the brief waiver window. The Commission should review this filing opportunity in light of the potential for significant reductions in relocation reimbursement costs that will result when station elect to forego reimbursement. These “service rule waiver stations” should nonetheless be required to transition to temporary (auxiliary or otherwise) facilities on their post-auction channels on or before their phase transition completion date.

B. Feedback Loop for Phase Scheduling Tool Requires Clarification.

In the Public Notice, the IATF and Media Bureau present the Phase Scheduling Tool as designed to accept and analyze changing inputs as developments unfold.²⁵ It is not clear, however, that the Transition Plan will be sufficiently adaptable to adjust in a dynamic, real-time way. T-Mobile urges the staff to integrate into the Phase Scheduling Tool the ability to revise scheduling according to the needs for and availability of specific resources on a dynamic basis to ensure that resources do not lie fallow. Specifically, T-Mobile is seeking clarification of the feedback mechanisms the Commission anticipates will provide them with the inputs needed to revise scheduling as suggested. Will there be a mechanism for broadcasters to report early transitions, and will that information be fed into the analytics in addition to reports of delays? Moreover, T-Mobile seeks additional information about how the Commission proposes to adjust the phases scheduling in response to these inputs. Clarification of this feedback loop and the

²⁴ See generally, comments and *ex parte* notices filed in GN Docket No. 16-142, *Media Bureau Seeks Comment on Joint Petition for Rulemaking of America’s Public Television Stations, the AWARN Alliance, the Consumer Technology Association, and the National Association of Broadcasters Seeking to Authorize Permissive Use of the “Next Generation TV” Broadcast Television Standard*.

potential results are important to flesh-out so that interested parties can adequately evaluate and comment in advance of the adoption of the Transition Plan.

III. CLARIFYING THE PROHIBITED COMMUNICATIONS RULES WILL INCREASE THE AMOUNT OF TIME BROADCASTERS HAVE TO PLAN AND IMPLEMENT THE POST-AUCTION TRANSITION

The Commission should increase the amount of time stations have to implement their new, post-auction channel assignments by clarifying that the prohibited communications rules permit certain types of communications that occur too late in the bidding process to pose any meaningful threat to the integrity of the auction. The Wireless Telecommunications Bureau (“Wireless Bureau”) is authorized to “develop[], recommend[] and administer[] policies, programs and rules concerning auctions of spectrum for wireless telecommunications,” and the Commission has affirmed the Wireless Bureau’s authority to clarify rules as necessary to administer the auction and to protect the integrity of bidding.²⁶ The Wireless Bureau should eliminate ambiguities in the current policies by clarifying that at least three types of communications related to the post-auction transition are not prohibited.

First, the Wireless Bureau should clarify that restricted-party forward-auction applicants may communicate about post-auction transition matters with three categories of restricted-party television broadcast stations: (a) those that received “zero-dollar” opening bids in the reverse

²⁵ *Transition Plan Public Notice*, ¶ 36 (“The Phase Scheduling Tool also enables the staff to analyze the sensitivity of transition phase time estimates based on changes in input data. During the transition, as new information becomes available, the Tool can be rerun to assess the potential impact of unforeseen developments on the overall schedule.”).

²⁶ See 47 C.F.R. § 0.131(c); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 15 (2014) (“*Incentive Auction Report and Order*”) (“We do not modify the Wireless Telecommunications Bureau’s well-established authority to adopt final auction procedures through a pre-auction public notice process”); see also *Broadcast Auction Scheduled to Begin March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd 8975 ¶ 3 (2015) (“*Bidding Procedures Public Notice*”).

auction and could not participate in the bidding process; (b) those that did not participate in the reverse auction; and (c) those that exited the auction during reverse-auction bidding. Second, the Wireless Bureau should clarify that restricted-party forward-auction applicants may communicate with restricted-party television broadcast stations about post-auction transition matters once the forward auction has satisfied the final stage rule. These types of communications occur too late in the bidding process to affect bids or bidding strategies in the incentive auction, and the Wireless Bureau should confirm that the prohibited communications rules do not apply. Third, the Wireless Bureau should clarify that restricted-party television stations that did not participate or are no longer participating in the reverse auction should be able to communicate about the post-auction transition with similarly situated restricted-party television stations.

A. The prohibited communications rule should not apply to communications between forward auction applicants and broadcast stations that did not participate or are no longer participating in the reverse auction.

The Commission and the broadcast and wireless industries are more likely to meet the Commission's transition schedules when restricted-party forward auction applicants can freely communicate with restricted-party television broadcast stations. While certain types of communications between forward- and reverse-auction bidders may increase the potential for anti-competitive bidding activity, many communications about the post-auction transition between forward auction bidders and certain restricted-party television stations pose little, if any, threat to the integrity of the auction. Three relevant categories of restricted-party television stations where the risk to the bidding process seems especially low include: (1) stations with zero-dollar opening bids; (2) stations that elected not to participate in the reverse auction; and (3) stations that participated, but subsequently stopped participating in the auction.

Stations with Zero-Dollar Opening Bids. Prior to the start of the incentive auction, the Commission released opening bid prices for eligible broadcast stations and announced that some stations would receive “zero-dollar” opening bids because the Commission would not need these stations at any stage of the auction.²⁷ Every restricted-party television broadcast station and forward auction applicant has had access to the Commission’s list of reverse-auction opening prices, including the stations that received zero-dollar opening bids. No information asymmetries can or will exist if forward-auction applicants communicate with the known non-participating stations for the purpose of accelerating the post-auction transition process. Forward auction bidders cannot gain a competitive advantage by acting on this publicly available information to accelerate the broadcaster transition. Rather than allow ambiguities in the current process to create procedural impediments to a timely transition, the Wireless Bureau should clarify that restricted-party forward auction applicants may communicate with any of the restricted-party television broadcast stations whose participation was never needed in the auction.

Stations Not Participating in the Reverse Auction. Communications about the post-auction transition with restricted-party television broadcast stations that never applied to participate in the reverse auction similarly pose little or no risk to the integrity of the incentive auction. The Commission has held that restricted-party television broadcast stations do not violate the rule on prohibited communications by stating whether or not they are participating in the reverse auction.²⁸ As a result, some television licensees have announced their decision not to

²⁷ See Reverse Auction Opening Prices, *attached to Incentive Auction Task Force and Wireless Telecommunications Bureau Release Opening Bid Prices for Reverse Auction*, Public Notice, 30 FCC Rcd 11358 (WTB Oct. 16, 2015) (“*Opening Bids Public Notice*”). The Commission determined that it would dismiss an application from an unneeded broadcast station that applied to participate in the reverse auction. *Id.* at 1, n.3.

²⁸ *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 ¶ 6 (WTB Oct. 6, 2015) (“*Prohibited*

participate in the reverse auction. Gray Television, for example, has said that, with the exception of one station, Gray “does not anticipate [having] significant involvement in the auction at this time.”²⁹ While the Commission itself has not publicly identified non-participating television stations, stations remain free to volunteer information about whether or not they are participating in the auction. When a restricted-party television station indicates that it has chosen not to participate in the incentive auction, then a forward-auction bidder’s communications about the post-auction transition should not implicate bids or bidding strategies because any forward-auction bidder should be equally capable of knowing a restricted-party television station’s status in the auction.³⁰ Therefore, communications about the post-auction transition between forward auction bidders and restricted-party television broadcast stations that state they have not applied to participate in the incentive auction should pose little risk to the integrity of the auction process.

Stations No Longer Participating in the Reverse Auction. Permitting communications between restricted-party forward auction applicants and restricted-party television broadcast stations that were once involved in reverse-auction bidding, but are no longer participating in the reverse auction, also does not necessarily pose a threat to the integrity of the auction process.

Communications Guidance Public Notice”) (“Communicating directly or indirectly that a licensee has or has not filed an application to participate in the reverse auction does not constitute communication regarding an applicant’s bids or bidding strategies and therefore does not violate the reverse auction rule prohibiting certain communications.”).

²⁹ See Gray Television Inc., Current Report (Form 8-K), at 2 (Jan. 11, 2016) (“On January 8, 2016, Gray filed its application to participate in the FCC Broadcast Incentive Auction. Gray intends to bid to surrender in the auction the license of WAGT(TV) in Augusta, Georgia, that it has proposed to acquire from Schurz. Other than WAGT(TV), Gray does not anticipate significant involvement in the auction at this time.”).

³⁰ Statements about a station’s auction status might reasonably remain non-public, but should not be exclusive to any one forward-auction participant to avoid asymmetries of information that might impair the bids and bidding strategies of restricted parties. See discussion *infra* n.34.

Broadcasters will exit the reverse auction in each stage of the auction. In some cases, participating broadcasters will voluntarily exit the auction because the clock price for their stations will fall below the price the stations are willing to receive to go off of the air or change status.³¹ In other cases, the Commission will not need the participating broadcast station to meet the latest clearing target and the station will automatically exit the reverse auction.³² In either event, the restricted-party television broadcast stations that exit the auction “will no longer be offered prices nor be allowed to place bids in the reverse auction.”³³ While the potential for informational asymmetries exists when communications regarding post-auction transition occur between forward-auction bidders and restricted-party television broadcast stations that have not been publicly identified as no longer participating in the auction process, the effect of these types of information asymmetries is unclear. A restricted party could perhaps purport to express an interest in the post-auction transition process as a means of identifying the likelihood of further price reductions in subsequent stages of reverse-auction bidding. But so long as the restricted party television licensee provides information on its bidding status on a non-exclusive basis to any forward auction bidder that seeks to accelerate the post-auction transition process, the risk that a forward-auction bidder could successfully pursue an anti-competitive strategy simply by knowing a restricted-party television station’s auction status seems low. Moreover, the Wireless Bureau could clarify that restricted parties would benefit from implementing safeguards to ensure that communications between restricted-party forward auction applicants and previously participating television broadcast stations do not influence bids or bidding strategies. For

³¹ See *Clearing Target of 114 Megahertz Set for Stage 2 of the Broadcast Television Spectrum Incentive Auction; Stage 2 Bidding in the Reverse Auction Will Start on September 13, 2016*, Public Notice, 31 FCC Rcd 9628, 9630 ¶ 8, n.12 (WTB Aug. 31, 2016).

³² *Id.*

³³ *Id.*

example, the Wireless Bureau could clarify that permissible communications are limited to only those parties negotiating early relocation agreements and could encourage or require the use of ethical walls between those individuals negotiating post-auction transition arrangements on behalf of the restricted party and that party's bidding team for the incentive auction.³⁴ With reasonable safeguards in place, the risks of information asymmetry from permitting communications about the post-auction transition with restricted parties that are no longer participating in reverse-auction bidding seem low.

Meanwhile, the benefits that would flow from clarifying the permissibility of these types of communications are immense. Forward auction bidders could gain access to valuable broadband spectrum for deployment and investment more rapidly than otherwise possible, and broadcast incumbents would face fewer risks of service disruption. In the *Incentive Auction Report and Order*, the Commission held that “[a]llowing communications between forward auction applicants and covered television licensees . . . will facilitate the UHF band transition.”³⁵ For that reason, the Wireless Bureau recently exercised its authority to clarify that “[o]ngoing discussions between broadcast licensees and wireless service providers that become forward auction applicants with respect to voluntary relocation of the broadcasters out of channel 51” do not violate the prohibited communications rules “so long as the discussions do not communicate

³⁴ The Wireless Bureau should continue to construe the prohibited communications rules as prohibiting restricted-party television broadcast stations from communicating their current auction status to other restricted-party television broadcast stations. Application of the prohibited communications rule to participants “on the same side” of the incentive auction prevents restricted-party television broadcast stations that are still participating in the reverse auction from distorting bidding.

³⁵ *Incentive Auction Report and Order* ¶ 493.

an incentive auction applicant's bids or bidding strategies.”³⁶ The Wireless Bureau should adopt the same approach for restricted party reverse-auction participants that are no longer participating in reverse-auction bidding. The same benefits of accelerated spectrum availability and fewer risks of disruption to incumbents associated with early relocation of channel 51 can result from timely transition of the 600 MHz band to broadband use. The successful, ongoing relocation of channel 51 stations led the Wireless Bureau to clarify that these discussions do not violate the prohibited communications rules, and the Wireless Bureau can build upon these successes without any meaningful risk to the integrity of the auction process by clarifying that communications between restricted-party forward auction applicants and television broadcast stations that have exited the auction do not violate the prohibited communications rule.

B. The prohibited communications rule should not apply to communications between restricted-party television stations and restricted-party forward auction applicants once the final stage rule has been satisfied.

All broadcast stations would benefit from a head start in the transition process during the period of time between when the final stage rule is satisfied and release of the *Auction Closing and Channel Reassignment Public Notice*. Once the final stage rule is satisfied, but prior to the auction's close, the Commission will send each eligible station that will remain on the air after the auction a confidential letter identifying the station's post-auction channel assignment, its technical parameters and its assigned transition phase.³⁷ The Commission will not make this information public until it releases the *Auction Closing and Channel Reassignment Public Notice*.³⁸ The Wireless Bureau can increase the amount of time stations have to coordinate and

³⁶ *Prohibited Communications Guidance Public Notice* ¶ 36 (internal quotation omitted). The Bureau noted that discussions regarding relocation out of channel 51 may continue even if the station is participating in the reverse auction. *Id.* ¶ 36, n.67.

³⁷ *Transition Plan Public Notice*, ¶ 7.

³⁸ *Id.*, ¶ 8.

plan for the post-auction transition by clarifying that restricted-party television broadcast stations and restricted-party forward auction applicants may communicate with one another about post-auction transition issues once the final stage rule for the forward auction is met. An uncertain, but potentially lengthy, period of time will pass between the time when the final stage rule is satisfied and release of the *Auction Closing and Channel Reassignment Public Notice*.³⁹ The steps between satisfaction of the final stage rule and release of the *Auction Closing and Channel Reassignment Public Notice* could take weeks, if not months to complete. During this time, restricted-party television broadcast stations will know their post-auction channel assignment (from the confidential letters that will be sent to each station) but the Commission's rules on prohibited communications will prohibit these stations from discussing their assignments (and discourage, perhaps inadvertently, outreach to identify potential resource constraints or possible coordination measures) with other restricted-party television broadcast stations or restricted-party forward auction participants.

Application of the prohibited communications rule does not protect the integrity of the auction because, once the final stage rule is met, the Commission will not conduct another stage of the reverse auction. Allowing restricted-party forward auction applicants and restricted-party television broadcast stations to communicate with one another once the final stage rule is met

³⁹ The Commission and auction participants will need to complete several tasks before the Commission releases the notice. First, satisfaction of the final stage rule triggers the spectrum reserve, and any additional rounds of bidding that may occur once the reserve is triggered. *Bidding Procedures Public Notice* ¶¶ 159, 226-27. Second, after bidding ends in the clock phase of the forward auction the auction system will analyze the fungible spectrum blocks using the contiguity objectives adopted in the *Bidding Procedures Public Notice*, in preparation for the assignment round. *Id.* ¶ 238. Third, the Commission will then conduct the assignment phase of the forward auction, grouping together similarly situated PEAs and sequencing assignment round bidding starting with high-demand PEAs and then simultaneously allowing for bidding for non-high-demand-PEAs by Regional Economic Area Grouping. *Id.* ¶¶ 242, 247.

poses no risk to robust participation in the reverse auction because any communications would occur after the end of reverse auction bidding.

T-Mobile has developed a widespread network of resources as a result of its channel 51 relocation work and is eager to share this knowledge base with relocating stations if these communications are not prohibited under the Commission's rules. The Wireless Bureau can speed the deployment of mobile broadband over 600 MHz spectrum by clarifying that the Commission's prohibited communications rules do not prevent restricted-party forward auction applicants from communicating with restricted-party television broadcast stations once the final stage rule for the forward auction is met.

- C. ***Restricted-party television stations that did not participate or are no longer participating in the reverse auction can communicate about the post-auction relocation among themselves without calling into question the competitive bidding process.***

Communications about the post-auction transition *among* restricted-party television broadcast stations that did not participate in the reverse auction or are no longer participating in the reverse auction also need not pose a risk to the integrity of the incentive auction. These types of stations no longer exercise downward pricing pressure on similarly situated stations because none of those involved in the discussions remain in active bidding. Of course, the process of a restricted party television station identifying which other restricted-party stations did not participate or are no longer participating in the reverse auction may prove challenging because not all restricted party television stations have publicly identified their status with respect to the auction; however, if a restricted-party forward-auction applicant has identified more than one restricted-party television station that did not participate or is no longer participating in the reverse auction, then the restricted-party *forward* auction participant should be able to inform the

restricted-party television station of the status of similarly situated television stations for the limited purpose of promoting a timely post-auction transition. Under these circumstances, communications related to planning and implementation of the post-auction transition process among restricted-party television broadcast stations that did not participate in the reverse auction or are no longer participating should have no meaningful effect on the bids or bidding strategies of restricted party reverse- or forward-auction bidders.

D. Ongoing clarifications regarding the effect of the prohibited communications rules would instill confidence in restricted parties and promote a timely post-auction transition.

Restricted-party television broadcast stations would benefit from additional publicly available information concerning how the Commission interprets and applies its rules against prohibited communications. Even wireless carriers experienced with the Commission’s auction processes have sometimes exercised excessive caution during auctions.⁴⁰ And restricted-party television broadcast stations, many of which do not have prior experience with the rule on prohibited communications, may feel compelled to adopt a similar hypervigilant posture.⁴¹

Providing clear, periodic, public explanations of the prohibited communications rules will help all stakeholders in the 600 MHz transition better distinguish permissible communications from prohibited ones. If the Commission were to adopt the clarifications proposed here through a public notice, for example, the public may benefit from seeing the information in different contexts, such as through the Commission’s bidding alert system and incorporated into the notice

⁴⁰ See, e.g., *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 at 4 (filed Sept. 29, 2015) (noting that some CCA carrier members are “overly diligent” and “overly cautious” in their application of the Commission’s prohibited communications rules).

⁴¹ See, *id.* at 3 (arguing that conservative application of the prohibited communications rules “is even more likely to occur in the case of broadcaster, who are generally less familiar with the Commission’s . . . rules than forward auction applicants”).

that will inform bidders that the auction has satisfied final stage rule. In addition, the Commission could reiterate that restricted party broadcast stations may continue to communicate with unrestricted parties, such as equipment vendors and service personnel, about the post-auction transition without implicating the rules on prohibited communications so long as the third-party vendors operate under industry-standard non-disclosure arrangements and do not serve as conduits for information to restricted parties that are subject to the rules on prohibited communications. Issuing periodic reminders about the scope of the rules on prohibited communications will encourage stakeholders to discuss measures intended to accelerate the post-auction transition without impairing the competitive bidding process.

IV. CONCLUSION

The goal of the incentive auction is to transition broadcast spectrum to wireless use swiftly without undue disruption to broadcasters or consumers. The Transition Plan provides a roadmap to accomplishing that objective within 39-months while also prioritizing clearing of the 600 MHz mobile spectrum. Incorporating additional flexibility and permitting the use of voluntary alternative temporary broadcast operations promises to accelerate the deployment of mobile broadband services and further reduce the potential for disruption. The proposal to maintain flexibility in the Phase Scheduling Tool for dynamic adjustment of phase timelines is also laudable, but the Commission must provide additional transparency about the mechanisms for obtaining inputs and the procedures for adjusting the scheduling plan accordingly throughout the transition.

The Commission should also clarify the scope of permissible communications. The rules on prohibited communications offer reasonable safeguards against abuse, but should be clarified to avoid stifling communications about the post-auction transition between forward-auction

bidders and (i) those restricted-party broadcast stations that are not participating in the reverse auction, and (ii) all restricted-party broadcast stations once the final stage rule is met. The rules should also be clarified to explain how restricted-party television stations may communicate among themselves without harming competitive bidding under certain circumstances. Finally, the Bureau should communicate any clarifications of its rules on prohibited communications more than once. The rules governing prohibited communications are confusing to many parties, and the application of those rules to this first-of-its-kind auction are novel to everyone. Clear, repeated communication from the Commission to the public will not only promote compliance, but also encourage the types of engagement that can lead to a timely and efficient post-auction transition.

Respectfully submitted,

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